

REMARKS

In the Office Action,¹ the Examiner rejected claims 1, 15, 29, 43, and 57 under 35 U.S.C. § 102(b) as anticipated by US Patent No. 5,068,797 to *Sansone*, and rejected claims 2-14, 16-28, 30-42, and 44-56 under 35 U.S.C. § 103(a) as unpatentable over *Sansone*.

By this amendment, Applicants have amended claims 1, 15, 20, 29, 43, and 57. Claims 58-61 are new. Support for the new claims and amendments can be found, for example, at paragraphs 044, 046, and 069. No new matter has been added.

35 U.S.C. § 102(b)

Applicants respectfully traverse the rejection of claims 1, 15, 29, 43, and 57 under 35 U.S.C. § 102(b) as being anticipated by *Sansone*. In order to properly establish that *Sansone* anticipates Applicants' claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference.

See M.P.E.P. § 2131, quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim."

See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Sansone does not disclose each and every element of Applicants' claims. In particular, *Sansone* does not disclose the combination of elements of amended claim 1 including, for example, "measuring the performance of the delivery carriers."

The system of *Sansone* can communicate "the capacity of the various carriers and routes" and "the current requirements, of which it is aware, for use of these routes" in order to determine the "optimum loading of its trucks and use of its routes." Column 14, lines 32-58. The system of *Sansone* can also choose between available depots because one is more advantageous than another, and can accommodate "an emergency that results in the loss or reduction of usability of one or more of the routes." Column 13, lines 1-6 and Column 14, lines 58-61. However, *Sansone* does not make any "measurements" of "performance," as claimed. Therefore, neither these, nor any other portions of *Sansone* constitute "measuring the performance of the delivery carriers," as claimed. Therefore, *Sansone* does not anticipate at least the recited portion of claim 1.

Because *Sansone* does not disclose each and every element recited by amended claim 1, *Sansone* cannot anticipate this claim, and claim 1 is allowable over the art of record. Independent claims 15, 29, and 43, though of different scope from claim 1, recite elements similar to those set forth above for claim 1. Claims 15, 29, and 43 are therefore allowable for at least the reasons presented above with respect to claim 1. New claims 58-61 and claims 2-14, 16-28, 30-42, and 44-56 are also allowable at least due to their respective dependence from claims 1, 15, 29, and 43. Applicants respectfully request that the Examiner withdraw the rejections under 35 U.S.C. § 102(b) and allow claims 1-56.

Applicants traverse the rejection of claim 57 under 35 U.S.C. § 102(b) as anticipated by *Sansone*. *Sansone* does not disclose each and every element of amended claim 57 including, for example, “receiving a change in the assignment data file.”

Sansone discloses that a “data center determines the difference between the total required capacity of the Post Office to handle all of this mail, and the actual current capacity of the post office . . . and communicates this information to the post office.” Column 16, lines 58-65. Next, “[t]he Post Office can then employ the information it has obtained from the data center for making available suitable facilities for the efficient and effective processing of its mail workload.” Column 17, lines 5-8. The Post Office “may find it advantageous to increase or decrease its staff during certain periods” or otherwise improve “logistics at the Post Office.” Column 17, lines 8-16. The Post Office does not “change” an “assignment data file,” as claimed. For at least this reason, neither these portions, nor any other portions, of *Sansone* teach “receiving a change in the assignment data file,” as recited in claim 57. The rejection under 35 U.S.C. § 102(b) should be withdrawn, and the claim should be allowed.

35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 2-14, 16-28, 30-42, and 44-56 under 35 U.S.C. § 103. No *prima facie* case of obviousness has been established.

To establish a *prima facie* case of obviousness, the Examiner must, among other things, determine the scope and content of the prior art and ascertain the differences between the claimed invention and the prior art. See M.P.E.P. § 2144.08(II)(A), 8th Ed.,

Rev. 6 (September 2007). Furthermore, the Examiner must make findings with respect to all of the claim limitations and must make “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See M.P.E.P. §§ 2143.03 and 2141(III).

The Examiner alleges that *Sansone* teaches “route determination of active, planned and closed routes,” “interrogating the data center as being useful in the event of an emergency,” “route and carrier optimization,” “adjust[ing] staff levels,” “communicat[ing] with mailers,” “exchanging manifest information,” and “tracking deliveries.” Office Action, pages 4-5. Even assuming that these allegations are true, which Applicants do not concede, these portions of *Sansone* fail to cure the deficiencies discussed above with respect to claim 1. That is, *Sansone* does not teach or suggest “measuring the performance of the delivery carriers,” as recited in claim 1, and required by claims 2-14, 16-28, 30-42, and 44-56.

As explained above, the elements of the claims are neither taught nor suggested by the cited references. Consequently, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the claimed invention. Accordingly, findings have not been made, and reasons have not been clearly articulated, as to why the claim would have been obvious to one of ordinary skill in view of the prior art.

Accordingly, the prior art fails to establish a *prima facie* case of obviousness with respect to claims 2-14, 16-28, 30-42, and 44-56, at least because the prior art fails to teach each and every element required by the claims. Applicants respectfully request

that the Examiner withdraw the rejections of claims 2-14, 16-28, 30-42, and 44-56 under 35 U.S.C. § 103.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any additional extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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